

No. 9(1)81-6Lab./ 14326.—In pursuance of the provisions of section 17 of the Industrial Disputes Act, 1947 (Act No. XIV of 1947) the Governor of Haryana is pleased to publish the following award of the Presiding Officer, Labour Court, Faridabad in respect of the dispute between the workman and the management of M/s Davis and White Company Pvt. Ltd., Mathura Road, Faridabad.

IN THE COURT OF SHRI HARI SINGH KAUSHIK, PRESIDING OFFICER, LABOUR COURT,
HARYANA, FARIDABAD

Reference No. 83 of 1979

Between

SHRI RAM SABAD PAL, WORKMAN AND THE MANAGEMENT OF M/S DAVIS
AND WHITE COMPANY PVT. LTD., MATHURA ROAD, FARIDABAD

Present:

Shri Sagar Ram Gupta for the workman.
Shri R.C. Sharma for the respondent management.

AWARD

This reference No. 83 of 1979 has been referred to this Court by the Hon'ble Governor of Haryana,—vide his order No. ID/FD/222/79/58215, dated 27th December, 1979 under section 10(i)(c) of the Industrial Disputes Act, 1947, existing between Shri Ram Sabad Pal, workman and the respondent management of M/s. Davis and White Company Pvt. Ltd., Mathura Road, Faridabad. The terms of the reference was :—

Whether the termination of services of Shri Ram Sabad Pal was justified and in order ? If not, to what relief is he entitled ?

Notices were issued to the parties after receiving this reference and the parties appeared and filed their pleadings. The case of the workman according to the demand notice, claim statement and rejoinder is that he joined the employer factory in the year 1976 at a salary of Rs. 208 p.m. according to the claim statement and demand notice. He further stated in claim statement that he was terminated on 13th August, 1979 without any reason or notice. The employer has victimised the workman. It is un-fair labour practice. The employer has violated the standing orders and principles of natural justice. After receiving the written statement from the respondent, he has stated in his rejoinder that the workman went on leave and thereafter he fell ill and sent the medical certificate with leave application through registered post to the respondent and returned after being fit and the management did not provide him work after he turn from leave. He had prayed for this reinstatement and with continuity of service and full back wages. The workman gave application on 19th July, 1980 for amendment of claims statement in which he wants to amend the claim statement as the termination of service is not in a manner as it has been done which amounts to retrenchment and the employer did not comply with the provisions of section 25-F of the Industrial Disputes Act, 1947 and gave a amended claim statement accordingly. The case of the respondent according to its written statement is that the workman has applied for leave on 27th May, 1979 for the period from 9th June, 1979 to 30th June, 1979 which was duly sanctioned. Thereafter nothing was heard from him in spite writing by the management. The claimant reported in the month of August, 1979 i.e. on 12th August, 1979 and there he was told that he had been absenting for a very long time, therefore, his name has been removed from the muster roll of the company. Hence the reference is bad in law and liable to be dismissed.

On the pleadings of the parties, the following issues were framed :—

1. Whether the workman abandoned his service by remaining absent from duty ? If so to what effect ?
2. If issue No. 1 is proved in favour of the management then whether the termination is an industrial dispute ? If not, to what effect ?
3. Whether the termination of service of the workman is justified and in order ? If not, to what relief is he entitled ?

Whether the termination of the workman by respondent amounts to retrenchment ? If so, to what effect ?

My findings issue-wise is as under :—

Issue No. 1.—Issue No. 1 is whether the workman abandoned his services by remaining absent from duty ? If so, to what effect ?

The representative of the respondent argued that the workman applied for leave from 9th June, 1979 to 30th June, 1979 and went home. The respondent received no intimation from the workman after the expiry

of leave period of the workman and according to Standing orders of the company which is Ex. M-1, the services of the workman were terminated by way of removing his name from the muster roll of the company being absent, according to the provision 11-D of the Standing orders. The workman came to resume his duty on 12th August, 1979 and told the name to the workman accordingly. He argued that Ex. W-5 was received by the respondent which was too late to take some action. The workman has stated in his claim statement that the workman is victimised due to unfair labour practice of the respondent, but he has not proved this fact by any way. The medical certificate produced in the court Ex. W-2 and W-3 are duplicate copies which are not proved and can not be believed. The workman has stated in his statement that he sent a medical certificate and the application for leave through registered A.D. post and produced Ex. W-4 the UPC receipts which can not be believed. The respondent received no letter from the workman and referred to the statement of Shri Vinod Mehta as MW-1 the receipt and despatch clerk of the company who brought the receipt register in the court and shown the same to the other representative which shows that the respondent received no letter containing the certificate of the workman and the respondent was justified in removing the name of the workman from the muster roll of the company according to Certified standing order provision 11-(D) and there is nothing wrong in the action of the respondent. In this way the workman had abandoned his services and lost his lien after being absent from duty without any information and intimation to the respondent for such a long time.

• The representative of the workman argued on this issue that the workman went on leave from 9th June, 1979 to 30th June, 1979 and he fell ill on 29th June, 1979 and admitted in the hospital as mentioned in Exhibit W-2 medical certificate in which one month rest from 1st July, 1979 is recommended by the doctor and after this the workman was again granted rest for 10 days according to Exhibit W-3. The workman remained admitted in the hospital through out and there was no other person at his disposal even then he sent the medical certificate and application through registered post to the respondent. After becoming fit the workman get the fitness certificate from the doctor, dated 10th August, 1979 which is Exhibit W-6 and came to resume his duties in the respondent factory on 12th August, 1979 and hand over fitness certificate to the Personal Officer. The Personal Officer objected on the ground that they have not received any application from the workman then the workman gave the original receipt of the postal authorities to the Personal Officer who was satisfied on these documents and asked the workman to come for duty tomorrow. But on the next date the Personal Officer refused to give the work on the next day. The same fact has been corroborated by the witnesses of the workman Shri Ranjeev Upadhaya as WW-3 and Shri Gopal Singh, workman of the same company, as WW-4. They have stated in their statement that the workman came in the factory on 12th August, 1979 and hand over the certificate and the postal receipt to the Personal Officer Mr. Malhotra, and who has promised to take him on duty on the next day but he was refused on next day. He further argued that burden of proving this issue was on the respondent, who has failed to discharge his duties and he has produced no evidence on this issue. The respondent witness has not stated about workman's absence of this period. He has only stated that he has brought the receipt register in which he has not received the application and medical certificate of the workman. The respondent has failed to give the opportunity to the workman. They have not sent any letter to the workman about his absence or for calling him for duties. The workman was a very old employee of the respondent joined the services in the year 1976 and they want to get rid of old employee for the reason best known to the respondent. So they get rid of the employee in this way. The workman should have been given the chances to clear his position which was not given by the respondent in this case. The respondent admits in their written statement that the workman went home after duly sanctioned of leave. The workman is resident of Sultanpur which is very far away from this place and a very backward area where he fell ill and it was the moral duty of the respondent to give help to the workman in his bad days inspite of doing away the workman. So the respondent has failed to prove this issue after hearing the arguments of both the parties and carefully going through the file. I am of the view that the respondent has failed to prove this issue up to the mark. The workman was an old employee of the respondent and he went home with sanctioned leave and he does not come after one month leave it was their duty to call his explanation for absentsing himself from duties which they have not done in this case. The workman has produced the medical certificate in duplicate and the fitness certificate in the court which shows that the workman was ill. He has also tried to call the doctor in the court and the court sent two registered letters to the doctors, but the doctor did not come because it is a very far place. Why he be kept in a inconvenient position for nothing in my view, otherwise the workman has tried his best for the doctor that he was actually ill in this period and admitted in the hospital. So this issue is decided in favour of the workman and against the respondent.

Issue No. 2.—Issue No. 2 is if issue No. 1 is proved in favour of the management then whether the termination is an industrial dispute? If not to what effect?

When the issue No. 1 has been decided in favour of the workman, so there exist industrial dispute between the parties.

Issue No. 3.—Issue No. 3 is as per reference?

When Issue No. 1 has been decided in favour of the workman then the orders made by the respondent on the basis of issue No. 1 that the workman abandoned his services by remaining absent himself from duties is also wrong and without justification because the respondent should have given the opportunity to the workman to be heard when he came to the factory and gave an application. Exhibit W-5 and W-1, dated 20th August,

1979 which is admitted by the respondent in the court. So I feel that the order of termination by the respondent is without justification and not proper. So the workman is entitled for reinstatement with full back wages and continuity of service. After this decision there is no need to discuss add. issue framed. The parties did not produce any evidence on this issue and no argument put forward by the parties.

No order as to costs. This be read in answer to this reference.

Dated the 22nd November, 1981.

HARI SINGH KAUSHIK,
Presiding Officer,
Labour Court, Haryana,
Faridabad.

Endstt. No. 3306, dated 27th November, 1981.

Forwarded (four copies) to the Commissioner and Secretary to Government, Haryana, Labour and Employment Departments, Chandigarh and as required under section 15 of the Industrial Disputes Act, 1947.

HARI SINGH KAUSHIK,
Presiding Officer,
Labour Court, Haryana,
Faridabad.

No. 9(1)81-6Lab./14327.—In pursuance of the provisions of section 17 of the Industrial Disputes Act, 1947 (Act No. XIV of 1947) the Governor of Haryana is pleased to publish the following award of the Presiding Officer, Labour Court, Faridabad in respect of the dispute between the workman and the management of M/s Raji Machine Tools, Industrial Plot No. 7, N.I.T. Faridabad.

IN THE COURT OF SHRI HARI SINGH KAUSHIK, PRESIDING OFFICER, LABOUR COURT,
HARYANA, FARIDABAD

Reference No. 58 of 1981

between

SHRI SUBHASH AHUJA, WORKMAN AND THE MANAGEMENT OF M/S RAJI MACHINE
TOOLS, INDUSTRIAL PLOT NO. 7, N.I.T., FARIDABAD

Present :

Shri Bhim Singh Yadav for the workman.

Shri S. D. Mishra for the respondent management.

AWARD

This reference No. 58 of 1981 has been referred to this Court by the Hon'ble Governor of Haryana,—vide his order No. ID/FD/276—80/7066, dated 5th February, 1981, under section 10(i)(c) of the Industrial Disputes Act, 1947, existing between Shri Subhash Ahuja, workman and the management of M/s Raji Machine Tools, Industrial Plot No. 7, N.I.T., Faridabad. The terms of the reference was :—

Whether the termination of service of Shri Subhash Ahuja was justified and in order ? If not, to what relief is he entitled ?

On receiving this reference, the notices were issued to the parties and the parties came present in the Court and file their pleadings. According to the claim statement, demand notice and rejoinder the case of the workman is that he joined as fitter on 1st July, 1980 at a monthly salary of Rs. 600. The respondent gave him an appointment letter, dated 26th June, 1980 as probationer for 9 months. The claimant performed his duty honestly, diligently, efficiently in compliance of the above said appointment letter. The respondent with any reason, cause, justification or notice refused to give duty to the claimant on 17th September, 1980. When the claimant asked the respondent for reason of termination, the respondent threatened to involve in a false criminal case. The claimant report this matter to the S.H.O. Police Station, Faridabad. The claimant wrote a letter to the respondent on 18th September, 1980 for knowing the reason of his termination through U.P.C. and received no reply for the same. Even after this letter the claimant presented himself daily on the gate of the factory for duty. The claimant received the termination letter on 22nd September, 1980 through a registered post. The termination is illegal wrong, un-lawful, un-warranted, arbitrary, malafide and against the principles of natural justice and is un-fair labour practice and forcible endorcement of un-employment and the workman claimant is entitled to re-instatement with full back wages and continuity of service. He further stated that the claimant send the demand notice, dated 30th September, 1980 on this demand notice.

the Conciliation Officer called the parties and submitted his failure report, dated 18th December, 1980. The claimant was appointed on probation for nine months and according to the ruling of the Supreme Court in the case of *Utkal Machinery Limited versus Shanti Patnayak* the respondent cannot terminate the services of the claimant for the completion of the probation period and the termination is illegal.

The case of the respondent according to its written statement is that the claimant was working in the factory in the capacity of Foreman (Fitter) and was drawing the salary of Rs. 600 per month and discharging administrative duties including the duties of supervisor. So he does not come under the definition of 2(5) of the Industrial Disputes Act, 1947. Hence the reference is *in law*. The appointment letter likely to be produced by the workman is false, fabricated, fictitious as the workman got added a line in the appointment letter that he was appointed on probation for nine months from the same type writing shop from where the management got typed the original appointment letter. The respondent stated that on the above grounds the reference may be rejected. The respondent had admitted in the written statement that he was appointed as fitter at a salary of Rs. 600 per mensem and he was promoted to the post of foreman. There is a specific denial for the probation period mentioned in the claim statement. The workman has committed the act of fraud, forgery by tempering the original record. The workman spread out lot of false rumour creating a tention between the workmen and the management which had resulted complete unrest in the factory. The workman incited and instigated the workmen to go on tool down strike, which was resolved with the intervention of the Labour Officer-cum-Conciliation Officer, Faridabad through a settlement under section 12(3) of the Industrial Disputes Act, 1947, dated 30th September, 1980, wherein,—vide its clause No. 9 it was agreed by the office bearers of the union of the workmen that the claimant Shri Subhash Ahuja, incited and instigated the workmen and spread out lot of false and fictitious as well misleading rumour between the workman and the management, which has lead to all unrest. Hence, it was settled that due to this the management will relieve the claimant and in that even the workmen of the management company will not have any sympathy towards him nor they will raise any dispute in respect of the claimant. In the light of that settlement the respondent gave the termination order, dated 17th September, 1980 to the claimant which was refused by hand and sent through registered A.D. On the pleadings of the parties, the following issues are framed :—

- (1) Whether the claimant is a workman or not ? If so, to what effect ? (O.P.P.)
- (2) Whether the appointment letter issued to the workman, is in the same form as it was issued initially by the management ? If there is any tempering or rewriting on it at a later date then by whom and to what effect ?
- (3) Whether the termination of the services of the workman, is proper, justified and in order ? If not, to what relief is he entitled ?
- (4) Relief ?

My findings on issues is as under :—

Issue No. 1

Issue No. 1 is whether the claimant is workman or not under section 2(s) of the Industrial Disputes Act. On this issue the respondent representative argued that the claimant was appointed as fitter according to Exhibit M-1 at a salary of Rs. 600 per month. As the factory is a very small unit and the claimant was given the whole charge to supervise the workmen in the factory. After one month the claimant complained against the workmen that they refused to obey the order of the claimant as he is also a workman and fitter. On the complaint of the claimant, he was promoted as Foreman to supervise the whole functions of the factory. The workman working under him was wholly under him in all respect. The witness of the respondent MW-2 the partner of the factory has stated in his statement that the claimant used to grant the leaves to the workmen and the management took all report of the work from the claimant. The claimant did not work with his own hands except to supervise the workmen working under him. He further argued that according to Exhibit M-3 and M-4 wherein it is written at point "A" that the claimant is a foreman and the claimant was drawing more than Rs. 500 as pay so he comes under the supervisory staff and not under the workman which does not include under the definition of 2(s) of the Industrial Disputes Act, 1947. The representative of the workman argued on this issue that the claimant was appointed as fitter according to the appointment letter Exhibit M-1 and Exhibit W-1 and the documents Exhibit M-3 and M-4 also clears this position wherein it is written the words fitter with foreman. Actually the claimant was the fitter and not the foreman. The ward foreman has been at after thought. The claimant was appointed as fitter and after one month according to the statement of witness MW-2 he was promoted as foreman without increasing his salary. The witness also denied about the promotion letter when there is no promotion letter issued to the claimant then how the respondent can prove that he was promoted as foreman even after one month. On the other hand the workman stated as WW-1 that the claimant used to do the work with his own hands. The respondent has given no proof on the file of the court to prove that the claimant was not a workman so the claimant comes under the definition of 2(s) of the Industrial Disputes Act, 1947 and is a workman.

After hearing the arguments of both the parties and going through the record of this court, I am of the view that the respondent has failed to rebutt or to give any such evidence to prove that the claimant was not a workman. So this issue is decided in favour of the workman and against the respondent.

Issue No. 2

Issue No. 2 is about the addition on the appointment letter. On this issue the representative of the respondent argued that Exhibit M-1 is a clear letter of appointment to the claimant in which he has added

after the wards months "your probation period for 9 Months." as shown in Exhibit W-1 at mark 'A'. He argued that the line even shows that it is addition afterwards because there is no sense of these lines after the wards month and it very clear by open eyes that it is a addition on Exhibit M-1. He further argued that the appointment letter was got typed from a shop Accurate Typewriter Service which is adjacent to the respondent factory and the respondent had called the owner of that type-writing shop as MW-1, who stated that he typed Exhibit M-1 and on that time he did not type as shown as Mark "A" on Exhibit W-1. He stated that the original was like Exhibit M-1 which is got typed by him in his shop. He further stated that the lines shown as Mark "A" are also typed with his machine which might have got typed by the claimant through the learner who comes to him to learn the type-writing. The witness has denied that he had not type these words in the original appointment letter. He further argued that after the statement of Shri V. K. Bhora owner of the typewriter and without its rebuttal it is proved that the claimant had got these words added after the original appointment letter Exhibit M-1.

The representative of the workman argued that the respondent has changed the original appointment letter on which these wards were mentioned. The original appointment letter bears the signature of the claimant which is not there on Exhibit M-1. It shows that the respondent has changed the original appointment letter and type other on the file. He further argued that the witness MW-2 Shri Ishwar Dass partner of the firm can not be believed that the signatures on this appointment letter were not taken from the claimant at the time of giving the same to the claimant because in every case the respondent received the signatures as admitted in his cross-examination on the duplicate copy of the appointment letter. So the appointment letter Exhibit W-1 is the correct letter while the letter of appointment Exhibit M-1 is all forge one which can not be believed.

After hearing the arguments from both the sides and carefully going through the file, I am of the view that what was the need to the respondent to add these wards at a improper place. By going through Exhibit M-1 it is very clear that the addition of the words makes no sense and it clearly shows that it is addition afterwards by the concerned party. So this issue is decided against the workman and in favour of the respondent management.

Issue No. 3

Issue No. 3 is as per reference. On this issue the representative of the respondent argued that the claimant was appointed on 1st July, 1980 as fitter at a salary of Rs. 500 p.m. and given the whole charge of the factory to supervise the whole work but instead of doing the work in the interest of the management, the claimant misled the workman and incited and instigated to go on tool-down strike. The owner of the factory enquired the matter from the workmen and came to know the whole facts. The tool down strike was settled with the intervention of the Conciliation Officer through a settlement under section 12(3) of the Industrial Disputes Act, 1947 on 30th September, 1980 in which clause No. 9 is for the claimant case. The settlement is Exhibit M-5 and at Marck "A" it is very clear that there was a settlement in respect of these workmen and due to this settlement the management relieved the claimant from the job. The claimant created a unrest in the factory and spread lot of false rumour creating misunderstanding and tention between the workman and the management and in the presence of the claimant it was not possible that any work can be done in the factory. Such person create unharmony and trouble among the workmen which is hinderious in the smooth running of the factory and loss to the management. The management cannot tolerate the loss by one person, after spending huge amount on the factory. So the position of the respondent management was quite justified and proper and within their jurisdiction.

The representative of the workman argued that the claimant is victimised due to the union activities and there was no fault of the workman in the circumstances which are in the factory. The respondent did not give any facilities to the workmen which the claimant demanded with a general demand notice on the management and the order of termination of services of the workman is not justified and not in order. He further argued that the respondent threatened the claimant for involvement in false criminal case and demanded the resignation from the service, on which the claimant filed the complaint to the police authorities which is Exhibit W-3 which was received by a police official at mark "A" which shows that the claimant was threatened by the respondent. He further argued that the respondent approached the police authorities and got suppress this application and the police did not take any action on the same.

After hearing the arguments and going through the file, I am of the view that the order of the respondent management is justified and in order, because they appointed the claimant as fitter on a healthy salary and after one month according to the statement of MW-2 he was promoted to supervise the work of the workmen in the factory. If the claimant was a goodman and working according to the instructions of the owner of the factory then they would not have terminated the services at such a early stage only after two months. The owner of the factory employee a person for the work and not to create a unrest in the factory by instigating the other workmen and spoiling the whole atmosphere of the factory. So in my view the termination is justified and proper, and the workman is not entitled to any relief. No order as to costs.

This be read in answer to this reference.

✓ Dated the 21st November, 1981.

HARI SINGH KAUSHIK,
Presiding Officer,
Labour Court, Haryana,
Faridabad.

Endstt. No. 3305, dated 27th November, 1981.

Forwarded (four copies) to the Commissioner and Secreary to Government, Haryana, Labour and Employment Departments, Chandigarh as required under section 15 of the Industrial Disputes Act, 1947.

HARI SINGH KAUSHIK,
Presiding Officer,
Labour Court, Haryana
Faridabad.